UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RESCAP LIQUIDATING TRUST,

Plaintiff,

- against -

SUMMIT FINANCIAL MORTGAGE LLC f/k/a SUMMIT FINANCIAL, LLC AND SUMMIT COMMUNITY BANK, INC. f/k/a SHENANDOAH VALLEY BANK, N.A.,

Defendants.

Case No. 1:14-cv-5453 (PGG)

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO WITHDRAW THE REFERENCE

QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
Tel: 212-849-7000
Fax: 212-849-7100

Counsel for Plaintiff

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

BACKGROUND 3

A. SFM's Sale Of Defective Loans To RFC In Breach Of Contract..........3

B. RFC's Bankruptcy Cases And Confirmed Plan's Retention Of Jurisdiction 4

C. RFC's Claims Against Defendants And Other Mortgage Originators 5

ARGUMENT..........6

I. DEFENDANTS HAVE NOT MET THEIR BURDEN TO SUPPORT WITHDRAWAL OF THE REFERENCE..........6

A. The Bankruptcy Court Has Related-To Jurisdiction..........6

B. Efficiency Favors Adjudication By Judge Glenn Because He Is Familiar With The Factual, Legal, and Procedural Matters Underlying These Claims 8

C. Efficiency And Judicial Economy Also Favor Adjudication By Judge Glenn Because He Is Coordinating Resolution Of Fourteen Similar Actions 9

D. Defendants' Arguments Concerning Efficiency And Judicial Economy Fail 10

E. The Other *Orion* Factors Also Favor Bankruptcy Court Adjudication 14

F. Withdrawal Of The Reference Should Also Be Denied Because This Is A Core Proceeding..........16

CONCLUSION..........21

TABLE OF AUTHORITIES

Page

Cases

Adelphia Commc'ns Corp. v. Rigas,
No. 02-cv-8495, 2003 WL 21297258 (S.D.N.Y. June 4, 2003) 10

Baker v. Simpson,
613 F.3d 346 (2d Cir. 2010)..16

In re BearingPoint, Inc.,
453 B.R. 486 (Bankr. S.D.N.Y. 2011) 13

Cent. Nat'l Ins. Co. of Omaha v. Devonshire Coverage Corp.,
565 F.2d 490 (8th Cir. 1977) 19

In re Charter Commc'ns,
No. 09-11435, 2010 WL 502764 (Bankr. S.D.N.Y. Feb. 8, 2010)...................................16, 17

Chartschlaa v. Nationwide Mutual Ins. Co.,
538 F.3d 116 (2d Cir. 2008)..17

City of Ann Arbor Emps.' Ret. Sys. v. Citigroup Mortg. Loan Trust Inc.,
572 F. Supp. 2d 314 (E.D.N.Y. 2008) 6

In re Connie's Trading Corp.,
No. 14-cv-0376, 2014 WL 1813751 (S.D.N.Y. May 8, 2014) 12

In re Coudert Bros.,
No. 11-cv-4949 (PAE), 2011 WL 7678683 (S.D.N.Y. Nov. 23, 2011) 13

In re Davis Offshore, L.P.,
644 F.3d 259 (5th Cir. 2011) 16, 19

In re Delta Air Lines, Inc.,
No. 07-cv-2007 WL 3166776 (S.D.N.Y. Oct. 30, 2007)...15

DeWitt Rehab. & Nursing Ctr., Inc. v. Columbia Cas. Co.,
464 B.R. 587 (S.D.N.Y. 2012)...13

Development Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP,
462 B.R. 457 (S.D.N.Y. 2011)...13

In re Durso Supermarkets,
170 B.R. 211 (S.D.N.Y. 1994)...13

In re EMS Fin. Servs., LLC,
491 B.R. 196 (E.D.N.Y. 2013) 15

In re Enron Corp.,
No. 05-cv-4079, 2005 WL 1185804 (S.D.N.Y. May 18, 2005) 11, 13

In re Enron Power Mktg.,
2003 WL 68036 16

In re Enron Power Mktg., Inc.,
No. 01-cv-7964, 2003 WL 68036 (S.D.N.Y. Jan. 8, 2003) 10

In re Extended Stay, Inc.,
466 B.R. 188 (S.D.N.Y. 2011)....................11, 12, 13

In re Gen. Growth Props., Inc.,
460 B.R. 592 (Bankr. S.D.N.Y. 2011) 17

In re Heller Ehrman LLP,
464 B.R. 348 (N.D. Cal. 2011) 12

Hickox v. Leeward Isles Resorts, Ltd.,
224 B.R. 533 (S.D.N.Y. 1998)....................9

In re Houbigant, Inc.,
185 B.R. 680 (S.D.N.Y. 1995)....................15

Land O'Lakes, Inc. v. Barry,
2013 WL 5487623 (D. Minn. Oct. 1, 2013) 19

In re Lehman Bros. Holdings Inc.,
480 B.R. 179 (S.D.N.Y. 2012)....................11, 13

In re Lyondell Chem. Co.,
467 B.R. 712 (S.D.N.Y. 2012)....................12, 14

In re MPF Holding U.S. LLC,
444 B.R. 719 (Bankr. S.D. Tex. 2011) 17

Manley, Bennett, McDonald & Co. v. St. Paul Fire & Marine Ins. Co.,
791 F.2d 460 (6th Cir. 1986) 9

In re Manville Forest Prods. Corp.,
896 F.2d 1384 (2d Cir. 1990)....................11

In re McClelland,
460 B.R. 397 (Bankr. S.D.N.Y. 2011) 13

Nisselson v. Salim,
No. 12-cv-0092, 2013 WL 1245548 (S.D.N.Y. Mar. 25, 2013)....................14

In re Orion Pictures Corp.,
4 F.3d 1095 (2d Cir. 1993)....................6, 10, 12, 14, 16

Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.,
639 F.3d 572 (2d Cir. 2011)....................7

In re Petrie Retail, Inc.,
304 F.3d 223 (2d Cir. 2002)....................16

RFC v. GreenPoint Mortg. Funding, Inc.,
No. 13-cv-8937 (S.D.N.Y. Apr. 2, 2014) 2, 7

RFC v. RBC Mortgage Co.,
No. 14-cv-04457 (S.D.N.Y.)....................2, 20

RFC v. SunTrust Mortg., Inc.,
No. 13-cv-8938 (RA), slip op. at 4 (S.D.N.Y. July 3, 2014) 2, 5, 7, 9, 17, 19

RFC v. Terrace Mortg. Co.,
725 F.3d 910 (8th Cir. 2013) 19

RFC v. UBS Real Estate Sec.,
No. 14-cv-3039 (GBD) 20

In re Refco,
461 B.R. 181 (Bankr. S.D.N.Y. 2011) 11

In re ResCap Liquidating Trust Mortg. Purchase Litig.,
No. 14-7900 (Bankr. S.D.N.Y. July 16, 2014) 5, 9

ResCap Liquidating Trust v. CMG Mortg., Inc.,
No. 14-cv-4950 (WHP)....................20

ResCap Liquidating Trust v. Cadence Bank, N.A.,
No. 14-cv-5250 (RA) 20

ResCap Liquidating Trust v. Honor Bank,
No. 14-cv-5415 (LGS) 20

In re Residential Capital, LLC,
No. 12-12020 4

Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC,
490 B.R. 46 (S.D.N.Y. 2013)....................12

Stern v. Marshall,
131 S. Ct. 2594 (2011)....................11, 13

In re The Mortgage Store, Inc.,
464 B.R. 421 (D. Haw. 2011) 11

Travelers Indem. Co. v. Bailey,
557 U.S. 137 (2009)....................16

Trust v. SFM and Summit Bank,
No. 14-1996 ....3, 4

Statutes

11 U.S.C. § 541....................17

28 U.S.C. § 157(b) 19

28 U.S.C. § 157(b)(3) 20

28 U.S.C. 157(d) 6

Fed. R. Bankr. P. 9033(b) 12

Plaintiff ResCap Liquidating Trust (the "Trust"), as successor-in-interest to Residential Funding Company ("RFC"), respectfully submits this memorandum of law in opposition to the motion of Defendants Summit Financial Mortgage, LLC f/k/a Summit Financial, LLC. ("SFM") and Summit Community Bank, Inc. ("Summit Bank" and, together with Summit Mortgage, the "Defendants"), to withdraw the bankruptcy reference in No. 14-1996 (Bankr. S.D.N.Y.).

PRELIMINARY STATEMENT

In this action and scores of others, including fourteen similar proceedings currently pending before Judge Martin Glenn in the Bankruptcy Court for the Southern District of New York, the Trust is seeking recovery of hundreds of millions of dollars in liabilities and losses RFC incurred due to the defective loans sold to it by SFM and other correspondent lenders. Those liabilities and losses were resolved primarily in and pursuant to a global settlement RFC negotiated and consummated last year in its chapter 11 bankruptcy case. Judge Glenn reviewed that global settlement as part of the plan confirmation process, and approved it with lengthy findings reflecting his nineteen months of involvement in what he has described as the most complex bankruptcy he has encountered during his tenure on the bench—and in which he demonstrated mastery of the factual, legal, methodological, and procedural issues. As Judge Glenn himself explained during a recent joint status conference in the numerous similar cases before him: "I'm familiar with the put-back claims, the other kinds of rep and warranty claims. I follow decisions in the New York Supreme Court. I'm familiar with decisions from other federal courts. So it's an area of the law I consider myself to be familiar [with]." June 24, 2014 Hrg. Tr. (excerpted as Nesser Decl. Ex. A) 69:16-20.

This action was appropriately filed as an adversary proceeding before Judge Glenn, and there is no cause to withdraw the reference. *First*, withdrawal would deprive this Court and the parties of the efficiencies and benefits provided by Judge Glenn's familiarity with, and review and approval of, the settlements that provide the basis of the claims as to which the Trust now seeks indemnification, as well as his ongoing coordinated adjudication of Plaintiff's fourteen similar actions. As Judge Castel recently noted in referring this action to the Bankruptcy Court in the first instance, whether "the bankruptcy court's jurisdiction is not 'exclusive' or . . . it may 'at most make proposed findings' does not dissuade this Court from referring the matter to [Judge Glenn]." *RFC v. GreenPoint Mortg. Funding, Inc.*, No. 13-cv-8937 (S.D.N.Y. Apr. 2, 2014), Dkt. 41 (reaffirming referral to Judge Glenn). *Second*, this action is a core bankruptcy proceeding as to which withdrawal of the reference is inappropriate, because it will necessitate application and enforcement of the complex inter-related orders issued in connection with the Plan and the settlements incorporated therein. Judge Abrams recently recognized the close nexus between Judge Glenn's bankruptcy orders and RFC's current claims, in an order referring another of RFC's actions to Judge Glenn because it "directly affect[s] the 'implementation, consummation, execution or administration' of the Plan." *RFC v. SunTrust Mortg., Inc.*, No. 13-cv-8938 (RA), slip op. at 4 (S.D.N.Y. July 3, 2014), Dkt. 42. The same analysis counsels retention of bankruptcy court adjudication here.

RFC is aware of Judge Hellerstein's recent decision withdrawing the reference in *RFC v. RBC Mortgage Co.*, No. 14-cv-04457 (S.D.N.Y.), which does not suggest a different result. First, that decision did not fully recognize the efficiencies of Bankruptcy Court administration even if it cannot issue a final order. Second, the opinion overlooked the core nature of these cases which would allow the Bankruptcy Court to issue final orders. The better approach is the solution adopted by Judge Daniels, Judge Pauley, Judge Schofield, and Judge Abrams in similar cases: waiting to rule until Judge Glenn issues an analysis of the core/non-core implications in RFC's action against UBS. That motion is fully briefed, and Judge Glenn has indicated he expects to issue an opinion within 30 days. Accordingly, Defendants' motion should be denied.

BACKGROUND

A. SFM's Sale Of Defective Loans To RFC In Breach Of Contract

RFC's First Amended Complaint alleges that SFM sold over 5,600 mortgage loans to RFC with a combined original principal balance in excess of $288 million. Am. Compl. ¶ 4, *Trust v. SFM and Summit Bank*, No. 14-1996 (Bankr. S.D.N.Y. filed July 25, 2014), Dkt. 30. In the Seller Contract pursuant to which SFM sold those loans to RFC (the "Contract," Am. Compl. Ex. A), incorporating into its terms and conditions the RFC Client Guide (the "Client Guide," excerpted as Am. Compl. Exs. B-1 to -15), SFM represented and warranted that the loans would meet certain criteria and satisfy certain characteristics (the "Warranties"), cataloged at length in the Amended Complaint. SFM also agreed to indemnify RFC against any liabilities and losses RFC might incur if SFM's representations and warranties were false. *See, e.g.*, Client Guide A210.

After purchasing loans from SFM, RFC generally securitized them through trusts ("RMBS") or sold them into whole-loan pools. Am. Compl. ¶¶ 21-23. In doing so, RFC made certain representations to the RMBS or whole-loan purchasers concerning the characteristics of the loans at issue. These representations were similar to, though narrower than, those RFC had received from SFM when RFC purchased the loans in the first instance. *See id.* ¶¶ 24-27.

Ultimately, it became clear that the loans SFM sold to RFC contained massive numbers of defects, in violation of the representations and warranties that SFM made to RFC. The loans began to default in large numbers, triggering losses in, for example, RMBS into which the loans had been securitized. *See id.* ¶ 48-54. RMBS investors and others began to file claims against RFC seeking compensation for these losses. *Id.* ¶¶ 59-73. The claims, relating to loans that RFC had purchased from SFM and other so-called "Mortgage Originators," were huge in scope and volume, involving more than 100 RMBS and a combined original principal balance of over $100 billion. *Id.* Among the core allegations common to these claims were that the loans backing RFC's RMBS breached RFC's representations and warranties concerning loan quality and underwriting guidelines—representations and warranties that, by extension, RFC had received from SFM and other Mortgage Originators from whom RFC purchased loans. *Id.*

B. RFC's Bankruptcy Cases And Confirmed Plan's Retention Of Jurisdiction

Facing billions of dollars in RMBS and other claims, RFC and fifty affiliated entities (the "Debtors") filed voluntary chapter 11 petitions on May 14, 2012. *Id.* ¶ 58. The cases were jointly administered and are still pending before Judge Martin Glenn, under the lead case *In re Residential Capital*. *See* Order Under B.R. 1015 Authorizing Joint Administration of the Debtors' Chapter 11 Cases, *In re Residential Capital, LLC*, No. 12-12020 (Bankr. S.D.N.Y. May 14, 2012) ("Bankruptcy Case" or "Bankr."), Dkt. 59.

After protracted and contested litigation, many of the claims against RFC were resolved in settlements that Judge Glenn reviewed and approved. For example, Judge Glenn presided over extensive litigation addressing the reasonableness of an $8.7 billion settlement as between RFC and certain creditors, concerning alleged defects in loans that RFC had purchased from SFM and other Mortgage Originators. Am. Compl. ¶ 80. Ultimately, Judge Glenn approved a global resolution that included five separate settlements of RFC's RMBS-related liabilities, each of which Judge Glenn found to be reasonable and in the best interests of the Debtors and their estates. *Id.* ¶ 81; *see* Findings of Fact ¶¶ 98-176, Bankr. Dkt. 6066.

On December 11, 2013, Judge Glenn confirmed the Debtors' Second Amended Joint Chapter 11 Plan. Bankr. Dkt. 6065 ("Conf. Order"); *see* Bankr. Dkt. 6065-1 ("Plan"). The Plan, which incorporated and implemented the RMBS-related settlements, expressly reserved post-confirmation jurisdiction in the bankruptcy court of any matter of which Judge Glenn would have had during the Bankruptcy Cases: "[O]n and after the Effective Date, the Bankruptcy Court shall retain exclusive *jurisdiction over all matters arising out of, or related* to, the Chapter 11 Cases and the Plan . . . ." Plan Art. XII (emphasis added); *see* Conf. Order ¶ 66. The Plan also preserved claims the Trust now brings against Mortgage Originators. *See* Plan Art. IV.S; Conf. Order ¶¶ 48-49; Plan Ex. 13 ("List of Liquidating Trust Causes of Action"), Bankr. Dkt. 6036-1.

C. RFC's Claims Against Defendants And Other Mortgage Originators

In view of the massive liabilities and losses RFC incurred pursuant to the settlement approved by the Bankruptcy Court, RFC subsequently sued Defendants and scores of other Mortgage Originators. The complaints alleged that the Mortgage Originators had sold RFC defective loans in breach of contract and sought to recover, *inter alia*, indemnification and damages for RFC's liabilities and losses incurred in and pursuant to RFC's Bankruptcy Case settlement. Currently, fourteen actions brought by RFC or the Trust (as RFC's successor) are pending before Judge Glenn: one (against HSBC) transferred by joint consent on the basis that RFC's claims are at least "related to" the Bankruptcy Case; two (against GreenPoint and SunTrust) referred by Judge Castel and Judge Abrams, respectively, on the same basis; one (against UBS) that was filed in New York state court, removed, and referred to Judge Glenn pursuant to this District's Standing Order of Reference; and ten, including this one, that the Trust filed as adversary proceedings.[1] Judge Glenn recently issued a Case Management & Scheduling Order ("CMO") establishing coordinated discovery and mediation in all these actions. *See In re ResCap Liquidating Trust Mortg. Purchase Litig.*, No. 14-7900 (Bankr. S.D.N.Y. July 16, 2014),

[1] Nos. 14-1915, 14-1916, 14-1926, 14-1996, 14-1998, 14-1999, 14-2000, 14-2001, 14-2003, 14-2004, 14-2005, 14-2008, 14-2009 (Bankr. S.D.N.Y.); *see RFC v. SunTrust*, No. 13-cv-8938 (S.D.N.Y. July 3, 2014).

Dkt. 1. Judge Glenn also indicated that discovery will proceed expeditiously. June 24, 2014 Hrg. Tr. 125:1-2 ("COURT: These cases are going to move. I'm telling everybody that right now.").

ARGUMENT

I. DEFENDANTS HAVE NOT MET THEIR BURDEN TO SUPPORT WITHDRAWAL OF THE REFERENCE

Defendants argue the Bankruptcy Court lacks jurisdiction, and that even if it did not, that efficiency favors withdrawal of the bankruptcy reference. Both arguments are mistaken. The Bankruptcy Court certainly has related-to jurisdiction, even under the more stringent "close nexus" test, as found by another court in this District in a similar case. Moreover, it would be inefficient to litigate this action in this Court rather than before Judge Glenn, who (a) is deeply familiar with the legal, factual, and procedural matters underlying these claims, (b) has a two-year head start in understanding those matters, (c) expressly retained jurisdiction, in an order entered just months ago, over these claims, and (d) is already adjudicating fourteen similar actions, of which this is just one. Furthermore, this action, like RFC's others, involves core bankruptcy jurisdiction. Defendants have not and cannot show the requisite "cause" for withdrawal of the reference. *See* 28 U.S.C. 157(d); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993).

A. The Bankruptcy Court Has Related-To Jurisdiction

Defendants argue that the Bankruptcy Court lacks jurisdiction here. Defs. Br. 7-11. That is incorrect. This case is unquestionably related to the underlying Bankruptcy Cases. The Second Circuit has repeatedly confirmed that the scope of "related to" jurisdiction is exceedingly broad, encompassing any action in which "the outcome . . . could '*conceivably have any effect on*' the bankrupt estate." *City of Ann Arbor Emps.' Ret. Sys. v. Citigroup Mortg. Loan Trust Inc.*, 572 F. Supp. 2d 314, 317 (E.D.N.Y. 2008) (emphasis added) (quoting *In re Cuyahoga Equip.*

Corp., 980 F.2d 110, 114 (2d Cir. 1992)). Additionally, two courts in this District already have found that "related to" jurisdiction exists in similar cases. *See RFC v. SunTrust Mortg.*, slip op. at 4-5, Dkt. 42 (referring another of RFC's actions to Judge Glenn because it "directly affect[s] the 'implementation, consummation, execution or administration' of the Plan"); *RFC v. GreenPoint Mortg. Funding, Inc.*, Dkt. 41 (reaffirming referral to Judge Glenn). In the *Suntrust* opinion, Judge Abrams labeled "unavailing" the argument that the Bankruptcy Court had no jurisdiction over RFC's similar action, specifically rejecting the argument Defendants make regarding the "close nexus" test, stating that "the present action meets even the more onerous 'close nexus' standard." *Suntrust*, slip op. at 3-4. Additionally, the confirmed Plan explicitly retained the Bankruptcy Court's "exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 cases and the Plan" (Plan at 116), which are defined to include the *specific claims* that RFC is pursuing against Mortgage Originators. *See* Plan at 80-81; Confirmation Order at 65-68; Plan Ex. 13 at 33.

Courts in this Circuit have uniformly found "related to" jurisdiction on facts similar to or more attenuated than those here. In one such case, the Second Circuit found "related to" jurisdiction as to state law claims asserted by liquidating trustees seeking to "recover damages . . . [allegedly] due [to] bankruptcy estates," for the sole reason that if plaintiffs were "successful in their claims[,] . . . the funds they recover[ed] w[ould] benefit the respective bankruptcy estates." *Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.*, 639 F.3d 572, 579 (2d Cir. 2011). In short, there can be no question that this case "relates to 'the core post-confirmation bankruptcy function of dealing with claims against the estate and the estate's remaining assets for distribution,'" *In re DPH Holdings Corp.*, 437 B.R. at 98 (agreeing with bankruptcy court's "related to" holding), or that it meets even the more stringent "close nexus" test, as found by Judge Abrams in *Suntrust*.

B. Efficiency Favors Adjudication By Judge Glenn Because He Is Familiar With The Factual, Legal, and Procedural Matters Underlying These Claims

Judge Glenn has extensive experience with, and understanding of, the specific settlements and other matters that principally underlie RFC's claims here. The Bankruptcy Case involved protracted, complex, and deeply contested matters before Judge Glenn, including days of trial and other hearings, scores of parties, hundreds of pages of briefs and reports, and billions of dollars in claims. In presiding over those proceedings, the Bankruptcy Court developed and mastered the factual and legal issues relevant to the very same defective loans, RMBS, settled legal claims, and alleged breaches of representations and warranties that underlie this action.

Specifically, by presiding for more than two years over one of the most complex bankruptcies in history, Judge Glenn became familiar with, among other things, the following matters that will be at issue here: the loan pools; the types of loan products (subprime, Alt-A, second liens, etc.); the losses in RMBS securitizations caused by defective loans; the Warranties and the law governing their scope and enforcement; the sampling methods used to assess the extent to which RFC allegedly breached its Warranties; and RFC's records. Indeed, as often occurs in liquidation cases, Judge Glenn *continues* to hear related disputes; dozens of adversary proceedings and hundreds of proofs of claim remain pending in the Bankruptcy Case.

Judge Glenn's past and ongoing experience reviewing the aforementioned materials will be directly transferable to this action. For example, in the event of disputes concerning RFC's settlements in the Bankruptcy Cases—including for example *what* was settled, *why* it was settled, the *terms* on which it was settled, the *reasonableness* of the settlements, and/or the proper *allocation* of those settlement liabilities and losses between and among the various Debtors and/or Mortgage Originators—Judge Glenn's expertise will be invaluable. The same is true of RFC's claim for indemnification for its attorney fees and other expenses which may implicate disputes concerning the subject matter, reasonableness, and allocation of those fees and expenses. *See Manley, Bennett, McDonald & Co. v. St. Paul Fire & Marine Ins. Co.*, 791 F.2d 460, 463 (6th Cir. 1986) (declaratory judgment for indemnity "should normally be filed . . . in the court that has jurisdiction over the litigation which gives rise to the indemnity problem"); *Hickox v. Leeward Isles Resorts, Ltd.*, 224 B.R. 533, 540 (S.D.N.Y. 1998) (finding that judicial economy favored referral of non-core proceeding to bankruptcy court because it had adjudicated matters related to the removed action, including integrating a mediator's findings into an approved plan).

The foregoing factors plainly favor bankruptcy adjudication. Indeed, Judge Abrams recently relied on similar considerations in referring a similar action to the Bankruptcy Court. *See SunTrust Mortg.*, slip op. at 4-5 (holding there is a "close nexus" between RFC's claims and the underlying Plan and proceedings because RFC's action would directly affect the execution or administration of the plan—issues the Bankruptcy Court is uniquely situated to adjudicate).

C. Efficiency And Judicial Economy Also Favor Adjudication By Judge Glenn Because He Is Coordinating Resolution Of Fourteen Similar Actions

Judge Glenn not only has a two-year head start in understanding the nature and basis of the claims in this action, but also has committed to resolving all of RFC's similar actions in an efficient, coordinated, and non-duplicative fashion. The omnibus CMO establishes a single centralized docket for consolidated briefing across the cases and coordinates discovery, mediation, and other matters. *See In re ResCap Liquidating Trust Mortg. Purchase Litig.*, No. 14-7900 (Bankr. S.D.N.Y. July 16, 2014), Dkt. 1. He also noted his intent to move the cases forward immediately and rapidly. June 24, 2014 Hrg. Tr. 67:23, 125:1-2 ("COURT: [D]iscovery starts now. . . . These cases are going to move. I'm telling everybody that right now."). He did so in recognition of the common legal and factual issues across the actions:

> Here, there may be common factual issues. There are likely to be common legal issues, interpretation of contracts, to the extent that the contracts are the same or

> substantially the same. . . . . [T]he next issue you identified was the amount of indemnity claims and any other rep and warranty claims and how much RFC has paid. Again, that would seem to be a common issue. There was also a global settlement as part of the bankruptcy case which I approved. . . . [T]here was a methodology by which the RMBS trustees were going to allocate the claim, but I don't believe it was the debtors who set that methodology. . . . [T]hat seems to be the common factual issues that are going to have to be explored.

Id. at 37:24-38:1, 62:10-22. In view of Judge Glenn's familiarity with the underpinnings of RFC's claims, together with his commitment to resolving those claims in a coordinated and timely fashion, it would be entirely inefficient to adjudicate this action outside of the Bankruptcy Court. *See also, e.g.*, *id.* at 69:16-20 ("I'm familiar with [RMBS] rep and warranty claims. I follow decisions in the New York Supreme Court. I'm familiar with decisions from other federal courts. [I]t's an area of the law I consider myself to be familiar [with].").

D. Defendants' Arguments Concerning Efficiency And Judicial Economy Fail

Defendants nevertheless argue that Bankruptcy Court adjudication will be inefficient because Judge Glenn may lack authority to issue final orders or judgments. That is mistaken.

First, courts have overwhelmingly recognized that considerations of efficiency weigh decisively in favor Bankruptcy Court adjudication even in cases involving non-core claims or those not subject to final adjudication by the Bankruptcy Court. A contrary rule would undercut the purpose motivating every aspect of the *Orion* analysis, which is based on "questions of efficiency and uniformity." *Orion*, 4 F.3d at 1101; *see also In re Enron Power Mktg., Inc.*, No. 01-cv-7964, 2003 WL 68036, at *11 (S.D.N.Y. Jan. 8, 2003) (denying a motion to withdraw the reference in a non-core matter because, "most importantly," the bankruptcy judge was "familiar with the salient issues in all the cases" and "far more able to supervise all of them together, unless and until a jury trial is necessary"); *Adelphia Commc'ns Corp. v. Rigas*, No. 02-cv-8495, 2003 WL 21297258, at *2 (S.D.N.Y. June 4, 2003) (reaching the same result as to core and non-core matters in part because "the bankruptcy court's familiarity with th[e] matter put[] it in the best position to oversee th[e] litigation"). Other such cases are legion[2]—particularly where the bankruptcy court has extensive relevant experience. As one Court explained:

> The bankruptcy court has been administering the Extended Stay bankruptcy for over two years. Judicial economy would be promoted by allowing the bankruptcy court, already familiar with the extensive record in this case, to initially adjudicate these cases. . . . Even if *Stern* precludes the bankruptcy court from entering final judgments as to certain claims, the bankruptcy court's proposed findings of fact and conclusions of law will narrow the issues to be resolved by this Court.

In re Extended Stay, Inc., 466 B.R. 188, 206-07 (S.D.N.Y. 2011); *see also In re The Mortgage Store, Inc.*, 464 B.R. 421, 429 (D. Haw. 2011) ("Withdrawal of [the] reference . . . would result in this court losing the benefit of the bankruptcy court's experience in both the law and facts, resulting in an inefficient allocation of judicial resources.").

The preference for adjudicating pretrial matters—and even some trials—in Bankruptcy Court has continued even after the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). As a court in this District observed last year:

> Multiple courts in this District have already concluded that, although *Stern* prevents the Bankruptcy Court from entering final judgment on [certain matters], *considerations of efficiency and uniformity counsel in favor of permitting the Bankruptcy Court to issue proposed findings of fact and conclusions of law*.

---

[2] *E.g.*, *In re Lehman Bros. Holdings Inc.*, 480 B.R. 179, 197-98 (S.D.N.Y. 2012) (denying motion to withdraw reference without prejudice to renewal at summary judgment stage); *In re Refco*, 461 B.R. 181, 193-94 (Bankr. S.D.N.Y. 2011) (noting that, to the extent *Stern* precludes final adjudication, "courts must impose a remedy that best corresponds to what Congress would have intended"); *In re Manville Forest Prods. Corp.*, 896 F.2d 1384, 1391 (2d Cir. 1990) (transfer or withdrawal from bankruptcy court with a "learning curve" advantage would delay resolution and undermine interest of justice); *In re Enron Corp.*, No. 05-cv-4079, 2005 WL 1185804, at *3 (S.D.N.Y. May 18, 2005) ("Even if the Bankruptcy Court were to determine that the instant matters are non-core, judicial efficiency as well as the uniform administration of the bankruptcy court proceedings weigh in favor of not withdrawing the reference. . . . The Bankruptcy Court is more thoroughly familiar with the Debtors['] claims and issues in the instant matter and all of the other Enron-related cases. Thus, the Bankruptcy Court is in a better position to adjudicate them all.").

Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, 490 B.R. 46, 58 (S.D.N.Y. 2013) (emphasis added). Similar holdings are common.[3] In fact, earlier this year the Supreme Court found that it was perfectly appropriate for Bankruptcy Courts to issue proposed findings that would then be reviewed by the District Court. *See Executive Benefits Insurance Agency v. Arkison, Chapter 7 Trustee of Estate of Bellingham Insurance Agency, Inc.,* 134 S.Ct. 2165, 2171-72. In short, mere questions about Judge Glenn's authority to issue final orders do not counsel in favor of withdrawal of the reference.

Second, and relatedly, the significant efficiency gains provided by bankruptcy court adjudication in the first instance are not obviated by the potential need for *de novo* review of a bankruptcy court's report and recommendation. *See Madoff Sec.*, 490 B.R. at 58 ("The hypothetical possibility of duplicative proceedings . . . cannot outweigh the efficiency of receiving the recommendation of a [bankruptcy] court."). Indeed, the procedures for *de novo* review of objected-to portions of a report and recommendation, *see* Fed. R. Bankr. P. 9033(b) and (d), suggest that where a case is best suited for bankruptcy court, the need for *de novo* review is not cause for district court adjudication in the first instance. A different outcome "would dramatically restructure the division of labor between district courts and bankruptcy courts by requiring that district courts hear a substantial percentage of adversary proceedings," *In re*

---

[3] *E.g.*, *In re Connie's Trading Corp.*, No. 14-cv-0376, 2014 WL 1813751, at *11-12 (S.D.N.Y. May 8, 2014) (denying motion to withdraw the reference even where "we have assumed *arguendo* that the bankruptcy court lacks constitutional authority to enter a final judgment on [the claims]," because "none of the other *Orion* factors support withdrawal"); *In re Lyondell Chem. Co.*, 467 B.R. 712, 723-24 (S.D.N.Y. 2012) (denying motion to withdraw the reference in action including non-core claims and noting that "[t]he bankruptcy court's authority to enter final judgment on claims is not determinative in deciding whether to withdraw the reference" and finding "decisive" the other *Orion* factors); *In re Heller Ehrman LLP*, 464 B.R. 348, 358 (N.D. Cal. 2011) (denying withdrawal of the reference because even though bankruptcy court could not enter final judgment on certain claims, "*[w]ithdrawal at this point would forego the services of a bankruptcy court ready, willing and able to do its job*" and therefore "[e]fficiency mandates the bankruptcy court's retention of this matter" (emphasis added)).

Extended Stay, 466 B.R. at 202 (denying motion to withdraw the reference), in contravention of the Supreme Court's admonition in *Stern*. *See* 131 S. Ct. at 2620 (decision should not "meaningfully change[] the division of labor" between bankruptcy and district courts).[4]

Third, the caselaw cited by Defendants is unavailing. In *DeWitt*, the court explicitly noted that the bankruptcy court had little knowledge or experience with the case. *See DeWitt Rehab. & Nursing Ctr., Inc. v. Columbia Cas. Co.*, 464 B.R. 587, 594 (S.D.N.Y. 2012) ("[U]nlike *In re Enron Corp.*, this case has few if any pre-trial or managerial matters that would be better addressed by the bankruptcy court . . . and no apparent related cases pending in the bankruptcy court . . . ." (citation omitted)). In *Development Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP*, 462 B.R. 457 (S.D.N.Y. 2011), there is no indication that the record developed during the bankruptcy case was relevant to the claims being asserted, and in *In re Durso Supermarkets*, 170 B.R. 211 (S.D.N.Y. 1994), there is no indication—unlike here—that the bankruptcy judge had retained jurisdiction over and analyzed the claims being asserted. *In re Coudert Bros.*, No. 11-cv-4949 (PAE), 2011 WL 7678683 (S.D.N.Y. Nov. 23, 2011), is similarly inapposite, as the court in that case specifically noted that the action was totally separate from the underlying bankruptcy. *Id.*, at *6. Finally, Defendants cite *In re BearingPoint, Inc.*, 453 B.R. 486 (Bankr. S.D.N.Y. 2011), but that case concerned parties who simultaneously argued that Bankruptcy Court was the best venue but refused to consent to its entry of final judgment. *See id.* at 492 n.17. Additionally, it was immediately distinguished twice, *see In re Extended Stay*, 466

---

[4] Defendants could easily obviate the purported issue of duplicative rulings by consenting to the entry of a final order by the bankruptcy court; they simply refuse to do so. Defs. Br. 13; *see In re Lehman Bros. Holdings*, 480 B.R. at 197 (commenting that if judicial economy "were [Chase's] sole concern, [Chase] could have simply consented to" entry of final orders by bankruptcy court).

B.R. at 207; *In re McClelland*, 460 B.R. 397, 403 (Bankr. S.D.N.Y. 2011), and has not been cited by a court since the year it was decided.

In sum, considerations of efficiency analyzed in *Orion* overwhelmingly weighs in favor of Bankruptcy Court adjudication. Especially now that numerous claims are before Judge Glenn, there is no "efficiency" in requiring this Court to reconstruct the factual, legal, and procedural history from scratch.

E. The Other *Orion* Factors Also Favor Bankruptcy Court Adjudication

Costs and Delays. No additional costs or delays will result from this proceeding being adjudicated in the first instance by the Bankruptcy Court. Indeed, any additional costs or delays would result from *this* Court being deprived of the Bankruptcy Court's expertise and knowledge regarding the law and facts at issue. *See Nisselson v. Salim*, No. 12-cv-0092, 2013 WL 1245548, at *6 (S.D.N.Y. Mar. 25, 2013) ("[W]here the bankruptcy court is more familiar with the record or already has extensive experience in the matter, it may be most efficient for the bankruptcy court to propose recommendations first . . ." (quotation omitted); *In re Lyondell*, 467 B.R. at 724 ("Given the extensive experience the bankruptcy court has acquired in this matter, permitting it to rule on the pending motions and to conduct pre-trial proceedings will be of assistance to this Court and to the parties."). Adjudication by the Bankruptcy Court would *reduce* costs and delays, especially now that Judge Glenn has coordinated the RFC actions before him.

Uniformity of Bankruptcy Administration. Defendants' assertion that adjudication of this action "will have no impact whatsoever on" bankruptcy administration is incorrect. RFC's actions likely will involve common legal issues regarding the interpretation of the Warranties pursuant to which loans were sold; common factual issues regarding the liabilities and losses RFC sustained as a result of the Originators' actions; and common procedural issues regarding the settlements out of which RFC's indemnification claims arise. These questions require a sophisticated understanding of the settlements and the Plan that form the basis for claims asserted in this action. The Bankruptcy Court is best positioned to ensure that these questions are answered consistently. The alternative would generate precisely the inconsistencies against which the Second Circuit cautioned in *Orion. See, e.g.*, *In re Delta Air Lines, Inc.*, No. 07-cv-2649, 2007 WL 3166776, at *5 (S.D.N.Y. Oct. 30, 2007) (resolution by bankruptcy court of issues in adversary proceeding that would affect related matters would "further uniformity of administration").

Forum Shopping. Neither the Bankruptcy Court nor this Court has issued any substantive rulings in any of RFC's actions, so any notion that RFC is forum shopping is outlandish. Defendants have not and cannot point to any unfair benefit or improper motive by RFC in seeking adjudication in the first instance in the Bankruptcy Court where its underlying Bankruptcy Case occurred. The only parties arguably engaged in forum shopping are Defendants, which now seek to avoid litigating this action before the court that knows the relevant factual, legal, and procedural background, and which retained jurisdiction over the claims at issue. Stripping Judge Glenn of the ability to adjudicate these issues would undermine efficiency and economy.

Indeed, the case cited by Defendants to support their accusation of forum shopping, *In re Houbigant, Inc.*, 185 B.R. 680, 686 (S.D.N.Y. 1995) demonstrates this point. In that case, a party was attempting to *get away from the court that had the most knowledge of an ongoing dispute*. *Id.* at 686 ("Because at this time this Court is familiar with the facts of this case . . . the resources of the creditors or debtors will not be further taxed if this Court decides the issues that are before it . . . ."). There, the knowledgeable court was the District Court; here, it is the Bankruptcy Court.

Jury Rights. Defendants have not demanded a jury, nor does any possible future jury demand provide a basis for withdrawing the reference now. *See In re EMS Fin. Servs., LLC*, 491 B.R. 196, 205 (E.D.N.Y. 2013) ("[T]he Court notes that a jury trial is not demanded here"; therefore, "the Court will not consider this factor as weighing in favor of finding the existence of cause to withdraw the reference in this case"); *Orion*, 4 F.3d at 1102-03 (even a jury demand would not diminish the propriety of pretrial adjudication in Bankruptcy Court, for if a case "will require protracted discovery and court oversight before trial," a court "might conclude that the case at that time is best left in the bankruptcy court"); *In re Enron Power Mktg.*, 2003 WL 68036, at *11 (declining to withdraw reference because bankruptcy court was "familiar with the salient issues" and "far more able to supervise all of them . . . unless and until a jury trial is necessary").

F. Withdrawal Of The Reference Should Also Be Denied Because This Is A Core Proceeding

In addition to efficiencies favoring Bankruptcy Court adjudication, Defendants' motion to withdraw the reference should be denied because this is a core proceeding.[5] The legal framework is clear. *First*, an action is core where it requires application and enforcement of a bankruptcy court's own orders. *See In re Charter Commc'ns,* No. 09-11435, 2010 WL 502764, at *4 (Bankr. S.D.N.Y. Feb. 8, 2010) ("All courts retain the jurisdiction to interpret and enforce their own orders."); *see also Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) ("[A]s the Second Circuit recognized, . . . the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders."); *In re Davis Offshore, L.P.*, 644 F.3d 259, 262 n.3 (5th Cir. 2011) (bankruptcy court had core jurisdiction to interpret plan and confirmation order); *Baker v.*

[5] As discussed above, the *Orion* factors militate against withdrawal of the reference even if the action is non-core. To the extent the core/non-core distinction is useful, it is because in certain cases it can be suggestive of "efficiency and uniformity." *Orion*, 4 F.3d at 1101. As discussed above, non-core status does not, on its own, require withdrawal of the reference.

Simpson, 613 F.3d 346, 352 (2d Cir. 2010) ("[A] bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders."); *In re Petrie Retail, Inc.*, 304 F.3d 223, 230 (2d Cir. 2002) (bankruptcy court retains core jurisdiction post-confirmation "to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan."); *In re Gen. Growth Props., Inc.*, 460 B.R. 592, 598 (Bankr. S.D.N.Y. 2011) ("The State Court Action is a proceeding falling within this Court's core jurisdiction because it implicates the 'enforcement or construction of a bankruptcy court order,' in this case the confirmation order."); *In re MPF Holding U.S. LLC*, 444 B.R. 719, 724 (Bankr. S.D. Tex. 2011) ("This matter is a core proceeding . . . because [it] relates to the Plan—specifically, to the interpretation and execution of the Plan. . . . [A] bankruptcy court has post-confirmation jurisdiction over matters 'that bear on the interpretation or execution of the debtor's plan.'"); *In re Charter Commc'ns*, No. 09-11435, 2010 WL 502764, at *4 (Bankr. S.D.N.Y. Feb. 8, 2010) (where a proceeding is "close in time to confirmation of the Plan" and "critical to the integrity of the Plan's structure," a bankruptcy court should decide the proceeding); *see also RFC v. SunTrust*, No. 13-cv-8938, slip op. at 4-5 (S.D.N.Y. July 3, 2014), Dkt. 42 (holding that a similar RFC action on the same bases "directly affect[s] the 'implementation, consummation, execution or administration' of the Plan").

Here, these categories of core proceedings are all implicated: This action against Defendants is a fundamental part of the Trust's efforts to liquidate assets of RFC's estate—that is, its claims against third parties[6]—the recoveries from which will be distributed to creditors. The claims result from various complex interrelated settlements between and among the Debtors

[6] *See, e.g.*, *Chartschlaa v. Nationwide Mutual Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008) (property of a bankruptcy estate under 11 U.S.C. § 541 includes "causes of action owned by the debtor or arising from property of the estate" or that are "sufficiently rooted in the pre-bankruptcy past").

and their creditors. And as the Trust monetizes its assets, it is required to make distributions in accordance with the Plan and the Liquidating Trust Agreement.[7]

To begin with, resolving RFC's claims will require a sophisticated understanding, application, and enforcement of the underlying liabilities and losses RFC incurred pursuant to Judge Glenn's orders. As one example, the bankruptcy settlements resolved claims that multiple creditors asserted against RFC in respect of the same securitizations—claims that may need to be segregated and allocated to determine which creditor is entitled to a recovery here and how much. As another example, the bankruptcy settlements resolved claims that multiple creditors asserted not only against RFC but also against other Debtors, and the manner in which these multi-debtor claims were settled varied. For example:

(a) Article IV.C.3 of the Plan, together with Schedules 2-R and 3-R thereto, permits RMBS Trustee claims against particular debtors and allocates those claims on an RMBS-by-RMBS basis;

(b) Article IV.D of the Plan permits monoline insurers' claims against particular debtors, but on a basis and in a manner that is different from the treatment of the RMBS Trustees' claims; and

(c) The largest securities claims were resolved through a settlement trust or a single cash payment, without identifying allowed claims against particular Debtors (*see* Plan Arts. IV.E and IV.H; Conf. Order ¶ 15).

To ascertain RFC's allocable share of the claims allowed in these settlements (in relation to the other Debtors), a court will need to analyze the settlements and methodologies approved in the

[7] Indeed, the Trust's sole purpose is to "liquidat[e] and distribut[e] the Liquidating Trust Assets . . . with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, its liquidating purpose described in [the] Plan and set forth in the Liquidating Trust Agreement." Plan Art. VI.B. Under the Plan, unlike in a reorganization case, RFC's assets did not revest in the reorganized entity. Rather, RFC's assets were transferred to the Trust.

Plan. Indeed, in voting to confirm the Plan, creditors agreed to its allocations and methodologies as to governing the amount of distributions they would receive on their allowed claims.[8]

Resolution of this action will also require an understanding of how to allocate the foregoing losses and liabilities to SFM pursuant to the Plan. In this respect, the Plan expressly contemplated and preserved RFC's affirmative claims for resolution by the Trust. Determining the amount the Trust is entitled to recover will likely require application or implementation of the Plan, a core bankruptcy function. In particular, the amount of the claim may depend in part on the dollar amount of defective mortgage loans SFM sold to RFC that went into a securitization trust whose underlying claim RFC settled as part of the global Plan. Judge Glenn should exercise core jurisdiction to adjudicate these issues. *See In re Davis Offshore, L.P.*, 644 F.3d 259, 262 n.3 (5th Cir. 2011) (bankruptcy court had core jurisdiction to interpret plan and confirmation order pursuant to 28 U.S.C. § 157(b)).

Judge Abrams has already recognized that RFC's actions bear a close nexus to Judge Glenn's orders in the Bankruptcy Case. Specifically, in the context of ruling that one of RFC's similar actions was subject to bankruptcy jurisdiction, Judge Abrams held that the action met "even the more onerous 'close nexus' [to the bankruptcy plan or proceeding] standard," because it "directly affect[s] the 'implementation, consummation, execution or administration' of the Plan, as the Plan expressly preserves such claims . . . and provides for RFC's creditors to receive a share of any recovery from them." *RFC v. SunTrust*, slip op. at 4-5. Those same factors buttress the case for core jurisdiction here.

[8] RFC preserves and does not waive its positions that its claims require a showing only of potential liability and the reasonableness of the settlements, *see Land O'Lakes, Inc. v. Barry*, 2013 WL 5487623 (D. Minn. Oct. 1, 2013) (citing *Cent. Nat'l Ins. Co. of Omaha v. Devonshire Coverage Corp.*, 565 F.2d 490, 495 (8th Cir. 1977)), and further that the Eight Circuit's *Terrace* decision shows that RFC need not prove defaults, *see RFC v. Terrace Mortg. Co.*, 725 F.3d 910 (8th Cir. 2013).

RFC acknowledges that in an order issued on July 21, 2014, in *RFC v. RBC Mortgage Co.*, No. 14-cv-04457 (S.D.N.Y.), Judge Hellerstein withdrew the reference to the bankruptcy court on the grounds, *inter alia*, that the action was non-core. We respectfully submit that Judge Hellerstein's decision was incorrect, including because it misconstrued and underestimated the efficiencies of Bankruptcy Court adjudication and because the opinion's cursory analysis of the core/non-core issue was insufficient as well as premature, coming before Judge Glenn's determination of the issue in a pending motion in the UBS case.

Finally, although this Court should deny the motion to withdraw the reference for all the foregoing reasons, it could alternatively await Judge Glenn's assessment of core jurisdiction—an issue on which he recently heard argument in a similar RFC action.[9] This approach has been adopted by Judge Daniels, Judge Pauley, Judge Abrams, and Judge Schofield.[10] Moreover, 28 U.S.C. § 157(b)(3) provides that the bankruptcy court should determine whether an action is core or non-core.

---

[9] *See* June 26, 2014, Hrg. Tr. (excerpted as Nesser Decl. Ex. B) 81:6-14, *RFC v. UBS Real Estate Sec.*, No. 14-1926 (Bankr. S.D.N.Y.) ("To determine how much, if any, the trust is entitled to recover from UBS on its indemnification claim, doesn't that require interpretation and application of the confirmed plan and a fairly complex set of provisions that deal with—just dealing with—it's broken down GMAC, M-claims, RFC claims. In Appendix 1, at page 190 of 265 in the same 6065-1 unit, there's a chart that shows, with various securitization trusts, what the loss due to breach was, how much the recognized claim is, et cetera."); *id.* 92:21-93:7 ("It's not just a question of familiarity with the settlement. I approved it, but it's extremely complex. And so if we assume a securitization trust that ha[s] mortgages that were originated by several different originators, how an allocation would be made, if it should be made, the question I'm raising really is does that require an interpretation and application of the confirmed plan and the annexes to it, and is it important that there be consistency in applying it. And as with any order that a court enters, the law generally is the Court that entered the order is in the best position to interpret and apply its own order.").

[10] *See* July 10, 2014, Hrg., *RFC v. UBS Real Estate Sec.*, No. 14-cv-3039 (GBD) (S.D.N.Y.); July 24, 2014, Scheduling Order, *ResCap Liquidating Trust v. CMG Mortg., Inc.*, No. 14-cv-4950 (WHP) (S.D.N.Y.) (Dkt. 8); July 31, 2014, Memo Endorsement, *ResCap Liquidating Trust v. Cadence Bank, N.A.*, No. 14-cv-5250 (RA) (S.D.N.Y.) (Dkt. 11); Aug. 1, 2014, Memo Endorsement, *ResCap Liquidating Trust v. Honor Bank*, No. 14-cv-5415 (LGS) (S.D.N.Y.) (Dkt. 8).

CONCLUSION

Defendants' motion to withdraw the reference should be denied.

Dated: August 4, 2014

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Peter E. Calamari

Peter E. Calamari
Isaac Nesser
Alex Rossmiller
John P. Sullivan
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100
PeterCalamari@quinnemanuel.com
IsaacNesser@quinnemanuel.com
AlexRossmiller@quinnemanuel.com
JohnSullivan@quinnemanuel.com

Counsel for Plaintiff